IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc. No.51399-M of 2006
Date of Decision:- 26.02.2007

Gurdarshan Singh ....Petitioner(s)

through
Mr.Parminder Singh, Advocate

vs.

State of Punjab ....Respondent(s)

through
Mr.Amit Khanna, AAG, Punjab.

***

CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

***

SURYA KANT, J.

This petition under Section 482 Cr.P.C., is directed against the order dated 18.3.2006 passed by the learned Chief Judicial Magistrate, Bathinda, whereby on an application moved by the State under Section 319 Cr.P.C., the petitioner has been summoned to face trial as well as against the order dated 29.5.2006 passed by the learned Additional Sessions Judge (Ad Hoc) Fast Track Court, Bathinda whereby the petitioner's revision petition against the order of summoning, has been dismissed.

As per the allegations contained in the F.I.R, when the complainant was sitting in the *Verandah* along with his wife and son, his neighbour i.e. the petitioner and his sons (Jatinderpal Singh and Varinderpal Singh) came in front of his house and started abusing the complainant and his family. The wife of the complainant allegedly closed the outer door of the house, however the accused persons pushed open the door and forcibly entered their house. At that time, the electricity lights

were on and it was about 8.15 P.M. The complainant has further alleged that while Varinderpal Singh raised a lalkara, the petitioner herein caught hold of the complainant by his arms while his other son, namely, Jatinderpal Singh gave a brick bat blow to the complainant which hit him on his right eye as also on his nose. The wife of the complainant and his son raised an alarm and upon hearing the same, the complainant's uncle challenged the accused. At this, the three accused ran away from the scene of occurrence.

During the course of investigation, the police found the petitioner innocent and his name was kept in column No.2. However, the complainant, when appeared as a prosecution witness, deposed and reiterated the allegations so levelled in the F.I.R. Relying upon his deposition, the learned Chief Judicial Magistrate, Bathinda, vide order dated 18.3.2006 by invoking his powers under Section 319 Cr.P.C. summoned the petitioner to face trial under Sections 326/452/34 IPC.

Aggrieved, the petitioner preferred a revision petition which has, however, been dismissed by the learned Additional Sessions Judge, as noticed earlier.

It is contended on behalf of the petitioner that powers under Section 319 Cr.P.C. are required to be invoked sparingly and not in a mechanical manner. Relying upon judgment of the Apex Court in the case of **Michael Machado** vs. **CBI**, 2000 SCC (Criminal) 609, it is argued that unless on the basis of evidence on record, there is likelihood of conviction of a person, he cannot be summoned as an additional accused to face trial.

It is being contended that there is an ample evidence on record which suggests that the petitioner, on the day of alleged occurrence, was on

official duty and was in his office upto 8.30 P.M. It is also claimed that the petitioner's office is located approximately 20-25 Kms. away from the place of incident, therefore, it could not have been possible for him to be at the place of occurrence at 8.15 P.M. Learned counsel for the petitioner has further contended that this contention was specifically raised before the learned revisional Court, however, the same has not been dealt with.

After hearing learned counsel for the parties and on perusal of the impugned order dated 29.5.2006 passed by the learned revisional Court, it appears that the said Court has not dealt with all the contentions raised on behalf of the petitioner.

Consequently, this petition is allowed to the extent that the impugned order dated 29.5.2006 passed by the learned Additional Sessions Judge (Ad Hoc) Fast Track Court, Bathinda, is set aside and it is directed that the revision petition preferred by the petitioner be decided afresh, after taking note of all the contentions raised on his behalf, and in accordance with law as early as possible and preferably within two months.

February 26, 2007 **(SURYA KANT)**
poonam **JUDGE**